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Attorneys for Petitioner

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. '10CV2542 IEG POR
)	
Petitioner,)	PETITION TO ENFORCE INTERNAL
)	REVENUE SERVICE SUMMONS
v.)	
)	Date: February 7, 2011
MICHAEL A. NEAL,)	Time: 10:30 a.m.
)	Crtrm: 1
Respondent.)	The Honorable Irma E. Gonzalez

Petitioner, the United States of America, by its counsel, Laura E. Duffy, United States Attorney, and Caroline J. Clark, Assistant United States Attorney, petitions the Court for an order to enforce the Internal Revenue Service ("IRS") summons described below and, in support thereof, alleges as follows:

1. This proceeding is brought at the request of the Chief Counsel, IRS, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States.

2. Jurisdiction over these proceedings is conferred upon this Court by 26 U.S.C. §§ 7402(b) and 7604(a), and 28 U.S.C. § 1345.

3. Venue is proper in the Southern District of California because Michael A. Neal ("Respondent") is found within this district.

4. At all times relevant, Marilyn Montgomery, who served the summons to Respondent, was a Revenue Officer with the IRS, employed in the California Area of the Small Business/Self-Employed Division of the IRS in San Diego, California, and was authorized to take testimony and receive documents requested in the IRS summons pursuant to the authority contained in 26 U.S.C. § 7602 and

1 26 C.F.R. § 301.7602-1. See Declaration of Revenue Officer Marilyn Montgomery at ¶ 1 (hereinafter
2 “Montgomery Decl.”).

3 5. Respondent resides at 4161 Udall Street, Apartment D, San Diego, California, which is within
4 the geographical jurisdiction of this Court.

5 6. On June 8, 2010, Revenue Officer C. Garcia issued an IRS summons directing Respondent
6 to appear on July 16, 2010, at 10:00 a.m. at 880 Front Street, San Diego, California, to give testimony
7 and to produce for examination the documents and records specified the summons. Montgomery Decl.
8 at ¶¶ 3, 5. The summons related to the assessment of income tax liability for the year 2005. Id. at
9 ¶¶ 2, 3. On June 10, 2010, Revenue Officer Montgomery served the summons by leaving an attested
10 copy of the summons at Respondent’s last and usual place of abode. Id. at ¶ 4. Copies of the summons
11 and certificate of service are attached to the Montgomery Declaration as Exhibits A and B.

12 7. On July 16, 2010, Respondent did not appear in response to the summons and did not provide
13 any of the summonsed information. Id. at ¶ 5.

14 8. Respondent has not provided the IRS with the testimony and documents requested in the
15 summons. Id. at ¶ 7.

16 9. All administrative steps required by the Internal Revenue Code for the issuance of the
17 summons have been taken. Id. at ¶ 9.

18 10. In order to obtain judicial enforcement of an IRS summons, the United States bears the
19 initial burden of showing “that the investigation will be conducted pursuant to a legitimate purpose, that
20 the inquiry may be relevant to the purpose, that the information sought is not already within the
21 Commissioner’s possession, and that the administrative steps required by the Code have been followed
22 . . .” United States v. Powell, 379 U.S. 48, 57-58 (1964); accord, United States v. Dynavac, 6 F.3d
23 1407 (9th Cir. 1993). The burden on the government is a “slight one” and may be satisfied by
24 presenting the declaration by the investigating agent. Dynavac, 6 F.3d at 1414 (citations omitted). Once
25 a prima facie case has been made, “a heavy burden falls on the taxpayer” to show an abuse of process
26 or lack of institutional good faith. Id. The taxpayer “must allege specific facts and evidence to support
27 his allegations.” Liberty Financial Services v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985)
28 (citation omitted). The matter may be decided on the written record in a summary proceeding. See Hotz

1 v. United States, No. MISC-CV-F-95-32, 1996 WL 159695 at *2 (E.D. Cal. Jan. 9, 1996). To be
 2 entitled to an evidentiary hearing, a respondent must make some showing to support a contention of
 3 improper purpose or lack of good faith. Fortney v. United States, 59 F.3d 117, 121 (9th Cir. 1995).

4 11. Revenue Officer Montgomery is conducting an investigation to determine Respondent's
 5 income tax liability for the tax year 2005. Montgomery Decl. at ¶ 2.

6 12. The Internal Revenue Code specifically allows the issuance of a summons for the purpose of
 7 "determining the liability of any person for any internal revenue tax. . . or collecting any such liability
 8 . . ." 26 U.S.C. § 7602(a). Therefore, Revenue Officer Montgomery's investigation is being conducted
 9 pursuant to a legitimate purpose specifically authorized by statute.

10 13. Further, the testimony, books, papers, records, or other data sought by the summons are not
 11 already in the possession of the IRS. Montgomery Decl. at ¶ 8.

12 14. Respondent is in possession and control of the testimony and documents concerning the
 13 above-described investigation.

14 15. The Internal Revenue Code permits the Secretary to summon the records of any person
 15 "which may be relevant or material" to the investigation. 26 U.S.C. § 7602(a)(1). It is well settled that
 16 to satisfy the relevancy requirement set forth in Powell, the United States must demonstrate that the
 17 summonsed information may "throw light upon" the subject of the investigation. United States v.
 18 Arthur Young & Co., 465 U.S. 805, 813-14, n. 11 (1984). This standard necessarily presents a low
 19 threshold because of the inherent difficulties in ascertaining, prior to examination, how much use the
 20 summonsed records will be in determining the collectibility of a person's tax liability and whether a
 21 person has an income tax liability for a specific period. The Supreme Court has observed that:

22 [a]s the language of § 7602 clearly indicates, an IRS summons is not to be judged by the
 23 relevance standards used in deciding whether to admit evidence in federal court. The
 24 language "may be" reflects Congress' express intention to allow the IRS to obtain items
 25 of even potential relevance to an ongoing investigation, without reference to its
 admissibility. The purpose of Congress is obvious: the Service can hardly be expected
 to know whether such data will in fact be relevant until it is procured and scrutinized.

26 Arthur Young & Co., 465 U.S. at 814 (internal citation omitted) (emphasis in original). This low
 27 threshold of relevance also follows from the language of the Code, which authorizes the investigation
 28 of persons who "may be liable" for taxes. 26 U.S.C. § 7601.

16. Under the instant circumstances, it is clear that the summonsed material is relevant. The purpose of Revenue Officer Montgomery's investigation is to determine Respondent's income tax liability for 2005. Montgomery Decl. at ¶ 2. The summons seeks, among other things, "All documents and records you possess or control regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit [including] . . . all bank statements, checkbooks, cancelled checks, savings account passbooks, records or certificates of deposit . . ." Id. at Exhibit A. The documents sought by this summons are relevant to the determination of the collectibility of the tax liability assessed against Respondent. Id. at ¶ 10.

17. There is no Department of Justice referral in effect with respect to Respondent. Id. at ¶ 11.

WHEREFORE, the United States requests that:

1. The Court enter an order directing Respondent, Michael A. Neal, to show cause, if any, why he should not comply with and obey the above-described summons (Montgomery Decl. at Exhibit A) served on June 10, 2010, and each and every requirement thereof, by ordering the attendance, testimony, and production of the books, papers, records, and other data required and called for by the terms of the summons before Revenue Officer Montgomery, or any other proper officer or employee of the IRS at such time and place as may be fixed by Revenue Officer Montgomery or any other proper officer or employee of the IRS.

2. That the United States recover the costs and expenses incurred in maintaining this action against Respondent.

3. That the Court grant such other and further relief as may be required.

DATED: December 10, 2010

LAURA E. DUFFY
United States Attorney

s/ Caroline J. Clark

CAROLINE J. CLARK
Assistant United States Attorney
Attorneys for Petitioner
E-Mail: caroline.clark@usdoj.gov

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

The United States of America

DEFENDANTS

Michael A. Neal

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Caroline Clark, Assistant U.S. Attorney, Civil Division, Office of the U.S. Attorney, 880 Front Street, Rm 6293, San Diego, CA 92101

Attorneys (If Known)

'10CV2542 IEG POR**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C. § 1345Brief description of cause:
Petition to Enforce Internal Revenue Summons**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/10/2010

SIGNATURE OF ATTORNEY OF RECORD

Caroline Clark

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____